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C O N F I D E N T I A L SECTION 01 OF 06 NAIROBI 000013

SIPDIS

C O R R E C T E D C O P Y (TEXT THROUGHOUT, AU COLLECTIVE ADDED)

SIPDIS

FOR S, D, P, G, R, DS, DRL, AND AF A/S FRAZER FROM THE
AMBASSADOR

E.O. 12958: DECL: 01/02/2018
TAGS: [PREL](#) [PGOV](#) [PHUM](#) [ASEC](#) [KE](#)
SUBJECT: KENYAN ELECTIONS - WORKING FOR A POLITICAL
SOLUTION AMID VOTING IRREGULARITIES AND VIOLENCE

REF: (A) 2007 NAIROBI 4830 (B) 2007 NAIROBI 4832

(C) NAIROBI 1 (D) RANNEBERGER/FRAZER TELCONS DECEMBER 27 - 31
AND JANUARY 1 (E) RANNEBERGER CONFERENCE CALLS WITH AF AND
NSC DECEMBER 29 AND 31 (F) NAIROBI 12 AND PREVIOUS

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Classified By: Ambassador Michael Ranneberger for reasons 1.4 (b,d)

1. (C) Summary. The electoral process in Kenya turned violent in recent days following the Electoral Commission's December 30 declaration of President Kibaki as the winner despite very serious irregularities in the vote tabulation process. Despite intense electoral observation by the U.S. and others, the vote tabulation at the Commission's headquarters was not fully transparent and there were substantial anomalies with respect to vote totals announced. In an effort to stem violence following the Commission's announcement, the government restricted live television news coverage, which we have condemned and are pressing to reverse. Serious violence has rocked some major urban areas, including parts of Nairobi. Although the situation is now relatively calm, a rally planned for January 3 by Raila Odinga, the losing presidential candidate, will likely lead to more violence. The government has banned the rally. Both the Kibaki and Odinga camps believe that they do not need to compromise and that time is on their side. Kibaki and his team feel that the police and security forces can restore normalcy, and that he can cobble together a credible cabinet without Odinga. Odinga, on the other hand, believes that he can make the country ungovernable and count on international support to force Kibaki to resign. There are deep ethnic tensions between Kibaki's Kikuyu and Odinga's Luo tribes, and a wide political divide between the two. However, Kenyans across the spectrum have been shocked by the violence and are coming to the realization that there must be a political accommodation between Kibaki and Odinga in order to restore normalcy and move the country forward. The U.S. is Kenya's most important international partner and is seen as neutral, and thus uniquely positioned to support Kenyan efforts to resolve this crisis. We are working the media intensively to urge peace

and a political settlement. We are in touch with Kibaki, Odinga, and their teams, as well as a wide range of influential players to facilitate dialogue. End summary.

Irregularities in Vote Tabulation

¶2. (C) As previewed in ref B, much can happen between the casting of votes and the final tabulation of ballots and it did. This message recaps developments reported in refs, provides current state of play, and discusses next steps. Much of our reporting during the past three days has been done by phone given our intensive focus on operational issues, particularly efforts to promote a positive outcome to the election imbroglio.

¶3. (C) Elaborate procedures were in place (much of it with U.S. support) to ensure transparency and accountability of the ballot tabulation process. That process involved three steps: counting at each polling station witnessed by observers and political party agents and the public posting of those results; tabulation of polling station results at a central tabulation facility in each of the 210 constituencies also to be witnessed by observers and party agents; transmission of those central tabulation results by phone and computer, and the physical delivery of the tabulation forms with the results to the ECK, also to be witnessed by observers and party agents. It was expected that these elaborate procedures would require at least two days to complete. The ECK was legally required to announce final results by cob on the 30th.

¶4. (C) By the 28th tensions were already mounting within both Kibaki's Party of National Unity (PNU) and Odinga's Orange Democratic Movement (ODM) as a result of delays in reporting results and allegations of irregularities in the tabulation process. Septel will analyze these allegations and our assessment of the tabulation process. In essence, ODM claimed that delays were deliberate as election officials doctored results. PNU officials made counter claims. Each side raised with the ECK and with observers specific allegations. These included, among others, unrealistically

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high voter turnout in some areas and tabulation forms altered after being announced at tabulation centers and before final announcement at the ECK.

¶5. (C) ECK officials and observers pursued these allegations to some extent, but the ability to do so was constrained by lack of time, original data from polling stations, and by the behavior of a number of ECK officials who delayed returning results and submitted incomplete or clearly altered documentation. Moreover, the ECK has no authority to open ballot boxes; only the courts do. During the night of Dec. 29, ECK officials together with representatives of the PNU and ODM, reviewed the tabulations, but neither side was satisfied that the review had fully addressed their concerns. The ECK partial review of the irregularities was also of questionable credibility, given that all of the commission members were appointed by the Kibaki government, and a number of them were suspected of being clearly biased and/or involved in doctoring at ECK headquarters. The Chairman of the ECK, Samuel Kivuitu, who was widely respected, was surrounded by staff of uncertain reliability and competence. It is worth noting that parliamentary results were not disputed because they were tabulated and announced at constituency tabulation centers, thus allowing no interference at ECK headquarters.

¶6. (C) Kivuitu has only limited authority as head of the ECK. The ECK works on a majority vote system. It is also important to note that the ECK is required by law to announce the results as received at the ECK from the tabulation centers. Some obvious irregularities like reporting unrealistically high turnout or clearly altered results can be rejected. There was, however, only a rejection of the results in one constituency in which violence resulted in

destroyed ballots. Other alleged irregularities, such as announcing results that ECK personnel personally inflated should have been, could have been, but were not corrected. At one point Kivuitu told me that his concerns about the tabulation process were serious enough that "if it were up to me, I would not announce the results." In the end, he participated with other commissioners in an announcement late on the 30th, which turned rowdy when Odinga walked with armed bodyguards into a room packed with observers, including me, party agents, and media. Kivuitu and the other commissioners retreated to their upstairs offices, where the results were announced. Kibaki was quickly sworn in (this was constitutionally necessary since his term ended at midnight on the 30th).

17. (C) My team and I, as well as the head of the EU observer mission, were at the ECK vote tabulation center throughout the tabulation process, and aggressively intervened with Kivuitu and other commissioners and staff to work for transparency. Our judgment is that the tabulation process was seriously flawed but, without having direct access to polling station numbers and doing a polling-station based recount, it is impossible to determine which candidate actually received the most votes. We had consistently predicted a close election. There were accusations of serious irregularities with respect to about 20 percent of the 210 constituencies. Some ECK insiders have alleged that the purpose of the delay in announcing the results in some of the constituencies was to determine the true count and then re-jigger in a manner to make up gaps in votes for Kibaki. Announced results differed from results initially received by ECK from the tally centers. We have seen documents that illustrate this. In a close election, with Kibaki winning by about 230,000 votes, such irregularities may have been enough to make a difference. At the polling center level there were also anomalies on both sides. While Odinga claims he was cheated, it is also conceivably possible that Kibaki would still come out ahead if all the irregularities were sorted out and a full recount carried out.

Violence

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18. (C) Serious violence broke the evening of the 30th (see septel on security situation). This included riots in the Nairobi slum areas and in two other neighborhoods, as well as riots and looting in other areas that had supported Odinga, including Kisumu, the capital of his native province of Nyanza. Violence then spread to other areas, particularly Rift Valley. The capital of that province, Eldoret, was particularly affected. For the most part, the violence has involved Odinga's Luo supporters in Nyanza and Kalenjin supporters in Rift Valley attacking Kikuyus, Kibaki's tribe and the principal supporters of the PNU. At least 75,000 people have been internally displaced with at least 200 killed. This is not Rwanda-style mass killings, but rather targeting of Kikuyu homes and businesses in an effort to force Kikuyus to leave the Nyanza and Rift Valley areas and return to the Kikuyu-dominated Central Province.

19. (C) Police forces are fully deployed, but somewhat overwhelmed. This is partly because police forces were scattered across the country, as the law required that 2 police officers be at each of the 27,000 polling stations. About 500 police were airlifted to reinforce the police in Eldoret. The military has not been deployed and remains in the barracks. (We have just learned, however, that military units will soon be deployed to clear roads of abandoned or damaged vehicles in order to restore normal traffic.) No state of emergency or martial law has been declared, although there is a dusk to dawn curfew in Kisumu. As a result, the situation there is now relatively calm. There are unconfirmed reports that the Kikuyu militia known as the

Mungiki (essentially a mafia-style organization primarily involved in criminal activity) might be mobilized to defend Kikuyus and/or retaliate against Luos and Kalenjins. Overall, however, as of January 2 a tense calm prevails in most areas.

The Media Role and Restrictions

¶10. (C) The media did a superb job on election day and throughout the vote tabulation process with highly professional 24-hr coverage (Kenya recently won an award for having one of the most free medias in the world). When violence erupted, however, the government, using an obscure 1998 law, banned all live television coverage. Although we have been told that this was subsequently modified to restrict only live coverage of violence and hate speech, the television stations continue not to air live broadcasts. We have condemned the restrictions on the media. A senior government official has indicated he expects the restrictions to be lifted soon.

The U.S. Role and Way Forward

¶11. (C) We worked intensively to press for a transparent tabulation process. This included round-the-clock presence at tabulation headquarters, close review of the tabulation itself, liaison with the political party agents, and extensive discussions with the electoral commissioners and staff. Throughout the process we made clear our strong support for Electoral Commission Chairman Kivuitu. As indications of serious irregularities mounted, we urged Kivuitu to delay announcing final results in order to conduct a more extensive review of the anomalies, and said that we would stand by him if he chose to do so. We closely coordinated efforts with the UK and with the EU election observation mission. At one point on the day he announced the results, Kivuitu told me "if it were up to me I would not announce the results." Nevertheless, late on the 30th Kivuitu announced final results showing Kibaki the winner. Several electoral commissioners have subsequently appeared in the media stating that they take responsibility for not having more closely scrutinized the vote tabulation process. On January 1, Kivuitu appeared on television to say that "I was pressured into announcing the results by people in State

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House who God should never have allowed to be born." Interestingly, Kivuitu defended Kibaki as not having been involved, and Kivuitu did not say that he believed the irregularities meant Odinga had won. "I don't know who won," he said, and this has made local headlines.

¶12. (C) As noted in ref B, the U.S. is uniquely positioned to promote a political settlement. We are Kenya's most important partner, and we are seen as neutral, whereas the UK is seen as clearly pro-opposition and relatively anti-government. That we are perceived as such is evidenced by the fact that we have, since the election crisis began, been approached by literally hundreds of Kenyans urging us to help facilitate a solution. We have been working along two lines. First we are making clear publicly the need to respect the rule of law, urging an end to violence, and emphasizing the need for a political settlement (see ref C for text of our formal statement). In that regard, I have been working the media intensively, including print, radio, and television, and we have received very positive feedback on that. Second, we are working to facilitate dialogue between the Kibaki and Odinga camps in order to achieve a political settlement. During the past 3 days I and my team have met with dozens of key interlocutors and talked on the phone with dozens of others.

¶13. (C) Kibaki and Odinga are, in some respects, in similar

positions. Both are surrounded by a number of hard-line people who see the current situation as winner take all. Both believe that time is on their side. Kibaki and his team believe that forceful action will stop the violence within a few days, with relative normalcy returning by this weekend. Odinga, in their calculation, will then be left with no option other than to accept the election result. They have a clear game plan that involves, among other elements: immediately co-opting elected ODM members of Parliament in order to cobble together a PNU parliamentary majority; getting Kelonzo Musyoka (the third presidential candidate of ODM-K) to accept the vice presidency; going ahead with the naming of a cabinet that will include Luo and other groups as well as Kikuyu; not putting into force legislation that would require consultation with the opposition before parliamentarians can be poached; establishing a national commission to address the problem of tribalism (previous commissions on sensitive issues have generally faded away without real results); and rejecting any attempt for international mediation. Odinga, on the other hand, believes that he can make the country ungovernable and that the Kikuyu business community will, within a couple of weeks, then pressure Kibaki to step down in order to prevent the ruin of the country. We have been reliably told that Odinga is basing his strategy on a mass action approach similar to that carried out in the Ukraine. Clearly, the dynamics in Kenya are dramatically different, and that approach will not succeed here, at least not without considerable loss of life. Odinga is also counting on international pressure on Kibaki to give Odinga leverage and force Kibaki to step down.

¶14. (C) I am underscoring to both sides that their respective approaches are unrealistic and dangerous, and threaten even greater bloodshed. There are some indications the extent and brutal nature of the violence has sufficiently shocked Kenyans across the spectrum so that there is an emerging realization there must be a political solution. (Kenyans from the ordinary citizen to the elite have also been deeply shocked by the violence. "This is not the Kenya I know" is a constant refrain.) I am in close touch with a group of Kikuyu businessmen who want to work out a solution. I am also in close contact with members of Odinga's inner circle who want to see a deal worked out. We are facilitating contacts and helping pass messages.

¶15. (C) At this point, however, the bottom lines are still very far apart. Odinga is insisting that Kibaki lost the election. He is demanding a transitional government for four months, during which the independence and competence of the electoral commission would be strengthened, with new elections then held. Odinga is also insisting on a Kibaki commitment to constitutional reform and on a commitment to

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implement the law requiring that opposition parties must be consulted before any of their parliamentary deputies can be offered ministerial positions (poaching in order to undermine parties was a huge problem during the last parliament). Kibaki's inner circle says that accepting Kibaki as president for his full term is a sine qua non for any political deal.

¶16. (C) I have floated with both sides the possibility of forming a government of national unity, which could include Odinga as vice president or as prime minister, a position which would have to be created. Odinga could be given leadership of constitutional reform (both sides agree on the need for such reform). While each side is resisting moving from their declared positions, changing dynamics and mounting pressure on both may provide openings for progress in the coming days. On Kibaki's side, some are worried about the level of violence and the Kikuyu business elite are gravely concerned about the negative impact on their business interests. Odinga's side is also concerned about containing the violence, particularly since it is starting to rebound against them, with some in Nyanza and Rift Valley now asking

"how many more people must die in order for Odinga to become president." Odinga's people also realize that it will be difficult to force Kibaki from office. (The quiet posture of the military also encourages a solution: the leadership of the armed forces is professional and has made clear they do not want to be drawn into violence that has been spawned by politicians; however, the leadership is also largely Kikuyu -- and Kamba their traditional ally -- and will not want to see Kibaki forced from office.)

¶17. (C) Although he only garnered about 9 percent of the popular vote, the third presidential candidate, Kalonzo Musyoka, is well-positioned to play a pivotal role in working out a political settlement. Kibaki has offered Musyoka the vice presidency. Musyoka told me, however, that he will only accept this if Kibaki also cuts a deal with Odinga to bring him into the government (perhaps as prime minister). Although Musyoka's Kamba tribe is seen as an ally of Kibaki's Kikuyu, naming Musyoka would give some semblance of coalition to the government. How long Musyoka will hold out as leverage to get a deal between Kibaki and Odinga is unclear. If Odinga continues to refuse to deal with Kibaki, Musyoka may move to accept the vice presidency, arguing that Odinga is being unreasonable.

¶18. (C) Although some have suggested the need for outside mediation, Kenyans have always been able to resolve their problems themselves. They tend to resent outside interference. Odinga is welcoming the idea of international mediation, because he believes it will create pressure on Kibaki to step down. Any outside intervention will have to be carefully orchestrated to ensure it does not inadvertently encourage Odinga to delay coming to grips with a political settlement, or cause the Kibaki camp to entrench further. We understand that AU Chairman Kufour has asked to visit Kibaki in order to help calm the current situation and to encourage a political solution. Achieving that will require intense pressure on both Kibaki and Odinga, and continued close work with the people around them.

¶19. (C) Finally, I commend my team for having done a superb job throughout the holiday season to support U.S. efforts and to work the issues at all levels. Together we are exerting strong leadership to help Kenyans resolve this crisis. There are a number of factors which make me cautiously optimistic that they will succeed. These include, among others, the enormous democratic space that has opened up since the 2002 elections, the history of the 42 tribes of Kenya managing to work together despite problems, the vested interest that so many Kenyans have in the economic growth they have experienced, the fact that Kenyans are the most literate people on the continent, their vibrant civil society and media, and the relative strength of many of their institutions.

¶20. (C) That said, as history has demonstrated any number

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of times, (including in the U.S. after the assassination of the Reverend Martin Luther King when U.S. cities went up in flames) all societies are vulnerable to the unthinkable when there are long-standing, unresolved ethnic and racial grievances. In that context, ethnic divides between the Luo and Kikuyu run deep. Odinga is demonized by hard-liners in the Kibaki camp as being responsible for attempted genocide during the current violence despite his public calls for peace. Hard-liners in the Odinga camp encourage ethnic hatred of Kikuyus. Despite these ethnic tensions, and the fact that Kibaki and Odinga are still dug in to unrealistic political positions, Kenyans are waking up to the harsh reality they are witnessing. They seem increasingly determined to press for resolution of this crisis in a way that will continue to move the country forward. They are proud that Kenya has been held up as a democratic example for others and determined to recapture that standing. If Kenyans can work through this crisis on their own, with some

assistance from us and other friends - they will emerge as a
stronger democratic society.
RANNEBERGER